IN THE HIGH COURT OF JUDIATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4199 OF 1989

The Board of Trustees of the
Port of Bombay a Body Corporate
constituted under the provisions
of the Major Port Trusts Act, 1963
as amended by the Major Port Trusts
(Amendment) Act, 1974 having its
principal place of business at
Vijay Deep, Shoorjee Vallabhdas Marg,
Ballard Estate, Bombay 400 038 .. Petitioner
Vs.
Shankarlal Harilal Shah
since deceased
1.Smt. Hiraben Shankarlal Shah ..
2.Shri Mitesh Shankarlal Shah ..
3.Shri Hetal Shankarlal Shah ..
All of them residing at
60, Sagar Mahal,
65, Walkeshwar Road
Mumbai 400 006 .. Respondents

Mr.Makhija i/b M/s.Mulla and Mulla & C.B.C. for the petitioner.
Mr.J.J.Thakkar for respondent no.2.

CORAM : D.B.BHOSALE, J.

DATED : 10TH SEPTEMBER, 2004

ORAL JUDGMENT:

1. This petition is directed against the judgment and order dated 11.7.1989 rendered by the learned Judge of the Small Causes Court, Bombay in Interim Notice No.31 of 1988 in L.E.& C.Suit No.55 of 1975 of 1980 by which the notice has been made absolute and the respondent-defendant was allowed

to amend the written statement within ten days from the date of the order. In the Interim notice the respondent sought to amend his written statement filed on 29.10.1984.

2. The factual matrix, briefly stated, the petitioner-plaintiff filed the suit for recovery of possession of the suit premises bearing Plot No.321/B admeasuring 344.95 sq. mtrs. The suit was resisted by the respondent by filing written statement. During pendency of the suit on 8.8.1983 the original respondent - Shankarlal Shah vacated the suit premises and delivered possession thereof to the petitioner. He also paid to the petitioner a sum of Rs.1,62,640.54 as claimed by the petitioner towards arrears of compensation for 83 months commencing from 1st October, 1976 to 31st August, 1983. Shankarlal Shah died during pendency of the petition and hence his heirs and legal representatives were brought on record. The learned Judge by order dated 9.8.2003 held that the main prayer is satisfied and ordered that the suit be proceeded for the remaning reliefs. The respondent thereafter on 29.10.1984 made an application for amendment of the written statement. By way of amendment, the respondent sought to

introduce in the written statement that he has made payment to the petitioner as prayed for being arrears of the compensation for 83 months and the said amount also included the amount of additional charges of the Bombay Port Trust as stated in the letter dated 29.9.1978. It has also been stated in the particulars of the amendment that in fact the respondent has paid excess amount and he is entitled for refund of the amount. The amendment has been allowed holding that it does not touch the substratum of the suit and it would not cause prejudice or hardship to the petitioner. I perused the impugned order and the other material placed before me.

3. The law is well settled that principles applicable to the amendment of the plaint are equally applicable to the amendment of the written statement. The courts are expected to be most generous in allowing the amendment of the written statement as the question of prejudice is less likely to operate in that event. The defendant has right to take alternative plea in defence which, however, is subject to an explanation that by the impugned amendment the other side should not be subjected to injustice and that any admission made

in favour of the plaintiff is not withdrawn. All amendments of the pleadings should be allowed which are necessary for determination of the real controversies in the suit provided the proposed amendment does not alter or substitute a new cause of action on the basis of which the original lis was raised or defence taken. In the instant case, the defendant by way of an amendment has not introduced any such pleadings which would cause injustice to the plaintiff nor has he withdrawn any admission made in favour of the plaintiff. He seems to have introduced the averments in the light of the deveopments those took place after filing of the suit. Admittedly, pending hearing of the suit the defendant surrendered the suit premises and paid the amount claimed. Perusal of the amendment shows that it does not touch the substratum of the written statement or withdraws any admission made in favour of the petitioner-plaintiff. Keeping this in view, in my opinion, the learned Judge has not committed any error warranting interference by this court under Article 227 of the Constitution in the impugned order. In the circumstances, the writ petition is dismissed. Rule stands discharged. Trial is expedited.

(D.B.Bhosale, J.)

HIGH COURT AT BOMBAY
CIVIL APPELLATE SIDE

WRIT PETITION NO.4199 OF 1989

Date of Decision: 10th September 2004

For approval and signature:

The Hon'ble Mr. Justice : D. B. BHOSALE

1. Whether Reporters of Local papers may be allowed to see the judgement ?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any Order made thereunder?

5. Whether it is to be circulated to the Civil Judges?

6. Whether the case involves an important question of law and whether a copy of the judgment should be sent to Nagpur Office?